IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1391 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANLAL D KATARI - Petitioner(s)
Versus
KESHAVLAL VALJIBHAI & 1 - Respondent(s)

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Appearance :
MR PM THAKKAR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.C.PATEL

Date : 27/06/2006

ORAL JUDGMENT

1. The Learned Joint Civil Judge (J.D) Junagadh by his order dated 7.8.86 passed below Exh 14 in Regular Civil Suit No. 19 of 1986 found the

petitioner and respondent No. 2 guilty of committing breach of injunction order and directed them to pay in Court Rs 200/- each by way of compensation under Order 39 Rule 2 (a) CPC and they were also directed to file unconditional apology to the satisfaction of the court, failing which they were sentenced to undergo civil imprisonment for a period of 15 days.

2. Being aggrieved by the said order they filed Civil Misc. Appeal No. 174/86 in the District Court Junagadh. The learned Assistant Judge Junagadh allowed the appeal partly and set aside the order of the Trial Court so far as respondent No.2 was concerned. However, while dismissing the appeal of the petitioner, the Learned Extra Assistant Judge modified the order of the Trial court and it was ordered that the property of the petitioner be attached and he be detained in the Civil prison for a period of 3 months. The present petition directed against the said order.

3. Now, the appeal before the Learned Extra Assistant Judge was preferred by the petitioner.

There was no appeal by the original respondent no. 1 who had filed the application for taking action against the petition for committing breach of the of the order of injunction. While dismissing the appeal of the petitioner, the Learned Extra Assistant Judge could not and need not have modified the order against the petitioner to his detriment in the absence of any appeal by respondent No. 2. In the facts and circumstances of the case, the order of the Learned Assistant Judge so far as it concerns the petitioner is set aside and the order of the trial court is restored. It is clarified that the order of the Learned Assistant Judge allowing the appeal of respondent No. 2 is not set aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(M.C. Patel, J)

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